Version
as at 1 July 2022

Protected Disclosures Amendment Act 2009

Public Act	2009 No 11
Date of assent	5 May 2009
Commencement	see section 2

Protected Disclosures Amendment Act 2009: repealed, on 1 July 2022, pursuant to section 41 of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20).

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Public Service Commission.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Protected Disclosures Amendment Act 2009.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Protected Disclosures Act 2000.

Part 1
Amendments to principal Act

4 Interpretation

(1) Paragraph (e) of the definition of **employee** in section 3 is amended by adding "(including a person who is a member of the board or governing body of the organisation)".

(2) The definition of **employee** in section 3 is amended by adding the following paragraph:

(g) a person who works for the organisation as a volunteer without reward or expectation of reward for that work

(3) Paragraph (b) of the definition of **Ombudsman** in section 3 is amended by omitting "whom an Ombudsman" and substituting "whom the Chief Ombudsman".

(4) Section 3 is amended by repealing the definition of **public official** and substituting the following definition:

public official means a person who is an employee of a public sector organisation

(5) Section 3 is amended by adding the following subsection as subsection (2):

(2) An example used in this Act has the following status:

(a) the example is only illustrative of the provision to which it relates and does not limit the provision; and

(b) if the example and the provision to which it relates are inconsistent, the provision prevails.

5 Disclosures to which Act applies

(1) Section 6(1) is amended by omitting "the manner provided by" and substituting "accordance with".

(2) Section 6 is amended by adding the following subsections:

(3) If an employee of an organisation believes on reasonable grounds that the information he or she discloses is about serious wrongdoing in or by that organisation but the belief is mistaken, the information must be treated as complying with subsection (1)(a) for the purposes of the protections conferred by this Act and by section 66(1)(a) of the Human Rights Act 1993.

(4) This section is subject to section 6A.

6 New sections 6A to 6C inserted

The following sections are inserted after section 6:

6A Technical failure to comply with or refer to Act

(1) A disclosure of information is not prevented from being a protected disclosure of information for the purposes of this Act merely because—

(a) of a technical failure to comply with sections 7 to 10 if the employee has substantially complied with the requirement in section 6 to disclose the information in accordance with this Act; or

(b) the employee does not expressly refer to the name of this Act when the disclosure is made.

Example

Person A is an employee of Organisation B.

B's internal procedures for receiving and dealing with information about serious wrongdoing require the information to be provided to B's Human Resources Manager using a particular form.

Person A provides the information using the form to B's chief executive rather than the Human Resources Manager. Person A otherwise substantially complies with the Act.

The failure to comply is merely technical. Under this section, the disclosure is still a protected disclosure for the purposes of this Act.

(2) This section applies despite anything to the contrary expressed or implied in the relevant internal procedures.

6B Role of Ombudsmen in providing information and guidance

(1) An Ombudsman may provide information and guidance to an employee on any matter concerning this Act (either on a request made at any time or at the Ombudsman's discretion).

(2) If an employee notifies the Office of the Ombudsmen, orally or in writing, that he or she has disclosed, or is considering the disclosure of, information under this Act, an Ombudsman must provide information and guidance to that employee on the following matters:

(a) the kinds of disclosures that are protected under this Act:

(b) the manner in which, and the persons to whom, information may be disclosed under this Act:

(c) the broad role of each authority referred to in paragraph (a)(i) to (x) of the definition of appropriate authority in section 3(1):

(d) the protections and remedies available under this Act and the Human Rights Act 1993 if the disclosure of information in accordance with this Act leads to victimisation of the person making the disclosure:

(e) how particular information disclosed to an appropriate authority may be referred to another appropriate authority under this Act.

6C Information about internal procedures

(1) For the purpose of this Act, an Ombudsman may request 1 or more of the following from an organisation:

(a) information concerning whether the organisation has established and published internal procedures for receiving and dealing with information about serious wrongdoing; and

(b) a copy of those procedures; and

(c) information about how those procedures operate.

(2) An organisation is not required to comply with a request made under subsection (1) if it is not a public sector organisation.

7 Disclosure may be made to Minister of the Crown or Ombudsman in certain circumstances

Section 10 is amended by repealing subsection (2) and substituting the following subsection:

(2) A disclosure under this section may be made to an Ombudsman only if—

(a) it is in respect of a public sector organisation and it has not already been made to an Ombudsman under section 9; or

(b) it is in respect of an organisation other than a public sector organisation and the disclosure is made for the purpose of allowing the Ombudsman to act under section 15 or 16.

8 New heading and sections 15 to 15E substituted

Section 15 and the heading above that section are repealed and the following heading and sections substituted:

Further provisions concerning Ombudsmen

15 Ombudsmen may escalate disclosure to appropriate authority or Minister or investigate disclosure

(1) An Ombudsman may, with the consent of an employee who has made a protected disclosure of information to any organisation, appropriate authority, or other person in accordance with this Act,—

(a) refer the disclosure to an appropriate authority or to another appropriate authority if the Ombudsman considers, after consultation with that appropriate authority, that any of the circumstances in section 9(1)(a) to (c) apply; or

(b) refer the disclosure to a Minister of the Crown if the Ombudsman considers, after consultation with that Minister, that any of the circumstances in section 10(1)(b)(i) to (iii) apply; or

(c) investigate the disclosure if the Ombudsman considers that—

(i) the disclosure relates to a public sector organisation; and

(ii) any of the circumstances in section 9(1)(a) to (c) or 10(1)(b)(i) to (iii) apply.

(2) Subsection (1)—

(a) applies despite sections 7 to 10:

(b) does not authorise an Ombudsman to act if the protected disclosure of information is in respect of the Office of the Parliamentary Commissioner for the Environment.

(3) If an Ombudsman makes a referral under this section, he or she must promptly notify any organisation or other person that he or she is aware may be investigating the disclosure that the information disclosed has been referred under this section to an appropriate authority or Minister of the Crown for investigation.

(4) A protected disclosure of information does not, by reason of an Ombudsman acting under subsection (1), cease to be a protected disclosure of information.

(5) Nothing in this section prevents a protected disclosure of information being referred under—

(a) this section on more than 1 occasion; or

(b) section 16.

(6) This section is subject to sections 12 to 14.

15A Ombudsmen may take over some investigations or investigate in conjunction with public sector organisation

(1) An Ombudsman may take over an investigation of a disclosure of information by a public sector organisation, or investigate a disclosure of information in conjunction with a public sector organisation, if—

(a) the disclosure is in respect of the public sector organisation; and

(b) the Ombudsman considers that any of the circumstances in section 10(1)(b)(i) to (iii) apply; and

(c) the employee who made the disclosure consents to the Ombudsman acting under this section; and

(d) in the case of an investigation in conjunction with a public sector organisation, the public sector organisation consents to the Ombudsman acting under this section.

(2) However, subsection (1) does not authorise an Ombudsman to act if the protected disclosure of information is in respect of the Office of the Parliamentary Commissioner for the Environment.

(3) This section is subject to sections 12 to 14.

15B Ombudsmen may review and guide investigations by public sector organisations

(1) An Ombudsman may review and guide any investigation of a protected disclosure of information by a public sector organisation (either on the organisation's request or at the Ombudsman's discretion).

(2) Subsection (1) does not authorise an Ombudsman to issue a direction to a public sector organisation requiring it to act in a particular manner in relation to an investigation.

(3) Subsection (1) does not apply if the public sector organisation is the Office of the Parliamentary Commissioner for the Environment.

(4) This section is subject to sections 12 to 14.

15C Ombudsmen may receive reports on investigations and include information in annual report

(1) The Ombudsmen may receive reports on the following investigations:

(a) investigations referred under section 15:

(b) investigations in relation to which an Ombudsman has acted under section 15B:

(c) investigations in relation to which an Ombudsman has otherwise provided information or guidance under this Act.

(2) The Ombudsmen may include (among other matters) in their annual report under section 29 of the Ombudsmen Act 1975 information concerning all or any of the following in respect of the period covered by the report:

(a) current guidance issued by the Ombudsmen in respect of this Act:

(b) the number and types of information and guidance inquiries made to the Ombudsmen in respect of this Act:

(c) the number of protected disclosures of information made to the Ombudsmen:

(d) the number of investigations of disclosures of information undertaken or taken over by the Ombudsmen:

(e) the number of investigations referred under section 15:

(f) the outcome of the matters referred to in paragraphs (b) to (e) (if known by the Ombudsmen).

15D Chief Ombudsman may appoint persons to perform Ombudsman's functions under this Act

The Chief Ombudsman may, by written notice, appoint a person to perform an Ombudsman's functions under this Act.

15E Miscellaneous provisions relating to Ombudsmen

(1) The functions and powers of Ombudsmen under the Ombudsmen Act 1975, including the function of each Ombudsman to make an investigation into a matter of his or her own motion under section 13(3) of that Act, are not limited by this Act.

(2) The Ombudsmen have the same powers in relation to investigating a disclosure of information made under this Act as Ombudsmen have in relation to a complaint under the Ombudsmen Act 1975, but are not bound to investigate the disclosure of information.

(3) Sections 19, 20, and 30 of the Ombudsmen Act 1975 apply, with all necessary modifications, for the purpose of allowing an Ombudsman to obtain information, documents, papers, or things that would in his or her opinion assist him or her to act under section 6C, 15B, or 15C in relation to a public sector organisation.

9 New heading inserted

The following heading is inserted above section 16:

Reference from one appropriate authority to another of information disclosed

10 Confidentiality

(1) Section 19(2) is amended by inserting "or under the Local Government Official Information and Meetings Act 1987" after "Official Information Act 1982".

(2) Section 19 is amended by adding the following subsection:

(3) An Ombudsman may—

(a) provide information and guidance to organisations and employees concerning the circumstances in which anonymous disclosures of information may be made under this Act; and

(b) otherwise provide advice and assistance to organisations and other persons in relation to the duty specified in subsection (1).

11 New section 19A inserted

The following section is inserted after section 19:

19A Protections extend to volunteers of supporting information

(1) The protections conferred by sections 17 to 19 apply, with all necessary modifications, to a person who volunteers supporting information as if the information were a protected disclosure of information.

(2) In this section, a person volunteers supporting information if the person—

(a) provides information, in support of a protected disclosure of information made by another person, to—

(i) a person investigating the disclosure; or

(ii) the person who made the disclosure; and

(b) is an employee of the organisation in respect of which the disclosure was made; and

(c) wishes to provide the supporting information so that the serious wrongdoing can be investigated.

(3) However, a person does not volunteer supporting information if the person provides the supporting information only after being—

(a) required to do so under any enactment, rule of law, or contract for the purposes of the investigation; or

(b) approached during the course of the investigation by, or on behalf of, the person investigating the matter.

12 New section 23 substituted

Sections 23 and 24 are repealed and the following section is substituted:

23 No contracting out of Act

(1) This Act has effect despite any provision to the contrary in any agreement or contract.

(2) Any provision in any agreement or contract that purports to require an employee to withdraw or abandon a disclosure of information made under this Act is of no effect.

Part 2
Transitional provision

13 Transitional provision

The amendments made by this Act apply to disclosures of information made after the commencement of this Act.

Notes

1 General

This is a consolidation of the Protected Disclosures Amendment Act 2009 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20): section 41

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